



1 claims or dismiss the complaint, or any portion of the complaint, if the complaint  
2 "is frivolous, malicious, or fails to state a claim upon which relief may be  
3 granted," or "seeks monetary relief from a defendant who is immune from such  
4 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.  
5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
7 elements: (1) that a right secured by the Constitution or laws of the United States  
8 was violated, and (2) that the alleged violation was committed by a person acting  
9 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

10 B. Legal Claims

11 In order to recover damages for allegedly unconstitutional conviction or  
12 imprisonment, or for other harm caused by actions whose unlawfulness would  
13 render a conviction or sentence invalid, a § 1983 plaintiff must prove that the  
14 conviction or sentence has been reversed on direct appeal, expunged by executive  
15 order, declared invalid by a state tribunal authorized to make such determination,  
16 or called into question by a federal court's issuance of a writ of habeas corpus.  
17 Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). A claim for damages bearing  
18 that relationship to a conviction or sentence that has not been so invalidated is not  
19 cognizable under § 1983. Id. at 487.

20 When a state prisoner seeks damages in a § 1983 suit, the district court  
21 must therefore consider whether a judgment in favor of the plaintiff would  
22 necessarily imply the invalidity of his conviction or sentence; if it would, the  
23 complaint must be dismissed unless the plaintiff can demonstrate that the  
24 conviction or sentence has already been invalidated. See id.

25 Plaintiff's claims challenging/implicating the validity of his arrest,  
26 prosecution and conviction are barred under the rationale of Heck. See Guerrero

1 v. Gates, 442 F.3d 697, 703 (9th Cir. 2006) (Heck barred plaintiff's claims of  
2 wrongful arrest, malicious prosecution and conspiracy among police officers to  
3 bring false charges against him); Cabrera v. City of Huntington Park, 159 F.3d  
4 374, 380 (9th Cir. 1998) (Heck barred plaintiff's false arrest and imprisonment  
5 claims until conviction was invalidated); Smithart v. Towery, 79 F.3d 951, 952  
6 (9th Cir. 1996) (Heck barred plaintiff's claims that defendants lacked probable  
7 cause to arrest him and brought unfounded criminal charges against him). A  
8 judgment in favor of plaintiff in connection with these claims would imply the  
9 invalidity of a state conviction which has not already been invalidated.  
10 Plaintiff's claims challenging/implicating the validity of his arrest, prosecution  
11 and conviction fail to state a cognizable claim under § 1983 and (along with all  
12 corresponding defendants) must be DISMISSED without prejudice. See Edwards  
13 v. Balisok, 520 U.S. 641, 649 (1997); Trimble v. City of Santa Rosa, 49 F.3d  
14 583, 585 (9th Cir. 1995).

15 Plaintiff's claim for use of excessive force during the course of his arrest  
16 may not necessarily imply the invalidity of the arrest or conviction and therefore  
17 may not be barred by Heck. See Guerrero, 442 F.3d at 703; Cabrera, 159 F.3d at  
18 380; Smithart, 79 F.3d at 952-53. The claim will proceed against City of Santa  
19 Clara police officers Roy Gutierrez and Shawn Wynn. See Rutherford v. City of  
20 Berkeley, 780 F.2d 1444, 1447 (9th Cir. 1986) (allegation of use of excessive  
21 force by law enforcement officer in effectuating an arrest states a valid claim  
22 under § 1983), overruled on other grounds by Graham v. Connor, 490 U.S. 386  
23 (1989).<sup>1</sup>

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25 <sup>1</sup>The City of Santa Clara and its police department are dismissed because  
26 they cannot be held liable under § 1983 simply on the theory they are responsible  
27 for the actions or omissions of its employees. See Taylor v. List, 880 F.2d 1040,  
28 1045 (9th Cir. 1989). To impose municipal liability under § 1983 for a violation

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The clerk shall issue summons and the United States Marshal shall serve, without prepayment of fees, copies of the complaint in this matter, all attachments thereto, and copies of this order on City of Santa Clara police officers Roy Gutierrez and Shawn Wynn. This action will be limited to plaintiff's claim of excessive force during arrest against these two defendants. All other claims and defendants are dismissed.

2. In order to expedite the resolution of this case, the court orders as follows:

a. No later than 90 days from the date of this order, defendants shall file a motion for summary judgment or other dispositive motion. A motion for summary judgment shall be supported by adequate factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56, and shall include as exhibits all records and incident reports stemming from the events at issue. If defendants are of the opinion that this case cannot be resolved by summary judgment or other dispositive motion, they shall so inform the court prior to the date their motion is due. All papers filed with the court shall be served promptly on plaintiff.

b. Plaintiff's opposition to the dispositive motion shall be filed with the court and served upon defendants no later than 30 days after defendants serve plaintiff with the motion.

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of constitutional rights, a plaintiff must show: (1) that the plaintiff possessed a constitutional right of which he or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving force behind the constitutional violation. See Plumeau v. School Dist. #40 County of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997).



1 e. The motion shall be deemed submitted as of the date the  
2 reply brief is due. No hearing will be held on the motion unless the court so  
3 orders at a later date.

4 3. Discovery may be taken in accordance with the Federal Rules of  
5 Civil Procedure. No further court order is required before the parties may  
6 conduct discovery.

7 4. All communications by plaintiff with the court must be served on  
8 defendants, or defendants' counsel once counsel has been designated, by mailing  
9 a true copy of the document to defendants or defendants' counsel.

10 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must  
11 keep the court and all parties informed of any change of address and must comply  
12 with the court's orders in a timely fashion. Failure to do so may result in the  
13 dismissal of this action under Federal Rule of Civil Procedure 41(b).

14 SO ORDERED.

15 DATED: Sept. 19, 2007

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17 CHARLES R. BREYER  
18 United States District Judge  
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